Supreme Court of California the United States Supreme Court *held,* that such tax does not violate the Constitution, that the tax is a local question and cannot be reviewed by the Federal Supreme Court. *Moffitt* v. *Kelly* (1910), 31 Sup. Ct. 79.

The tax on a wife's succession to her share of community property is a new question, there being apparently only one decision previous to the California decision in the present case. In that case the Louisiana court held that the surviving spouse did not acquire, in usufruct, the estate of the deceased spouse by inheritance, hence such usufruct is not subject to the inheritance tax. (By the law, the surviving spouse got a life use of the share of the deceased spouse, under certain conditions.) *Succession of Marsal,* 118 La. 212. In the California case the opposite conclusion is reached, holding that under the law there is in the wife a mere expectancy during coverture, no proprietary interest in the property, only an inchoate right. BALLINGER, COMMUNITY PROPERTY, p. 29; *Van Maren* v. *Johnson,* 15 Cal. 308. That the state having the right to tax, without, generally speaking, any right of supervision in the United States, may tax this succession to rights in the property as a subject of taxation, because she takes her share as heir even though the husband by will could not deprive her of her share. *Re Burdick,* 112 Cal. 387; *Spreckels* v. *Spreckels,* 116 Cal. 339. In the opinion of the United States Supreme Court, the nature or character of the right of the wife in community property for the purpose of taxation is peculiarly a local question which the United States court has no power to review. *Castillo* v. *McConnico,* 168 U. S. 674, 683. So that even though the wife's interest is vested and could not be impaired by subsequent legislation, the state still has power to select as an object of taxation the vesting in complete possession and enjoyment of such share in community property.

CONTRIBUTORY NEGLIGENCE — NEGLIGENCE IMPUTED TO PASSENGER. — Plaintiff's intestate, while riding in an automobile as a guest, was injured through the concurrent negligence of defendant and the party with whom he was riding. *Held,* that the negligence of the driver was not imputable to intestate. *Littlefield* v. *Gilman* (1911), — Mass. —, 93 N. E. 809.

By the great weight of authority the negligence of the driver of a private conveyance will not be imputed to a person riding with him, but who has no authority or control over him such as that of master and servant. *Wilson* v. *Puget Sound etc. Ry. Co.,* 52 Wash. 522, 101 Pac. 50; *Cincinnati etc. R. Co.* v. *Cook,* 44 Ind. App. 303, 88 N. E. 76; *Mayor of Baltimore* v. *Maryland,* 166 Fed. 641; and cases in 29 CYC., p. 549. See also 5 MICH. L. REV. 486. But there are some decisions to the contrary. *Mullen* v. *Owosso,* 100 Mich. 103, 58 N. W. 663, 23 L. R. A. 693; *Whittaker* v. *Helena,* 14 Mont. 124, 35 Pac. 904, 43 Am. St. Rep. 621; *Lightfoot* v. *Winnebago Traction Co.,* 123 Wis. 479, 102 N. W. 30. To create the imputation of negligence the passenger must have assumed such control and direction of the vehicle as to be considered practically in the exclusive possession of it. *Peabody* v. *R. Co.,* 200 Mass. 277, 85 N. E. 1051; *Duval* v. *Atl. Coast Line R. Co.,* 134 N. C. 331, 46 S. E. 750, 65 L. R. A. 722. It has also been held that the fact that the rela-

tionship of husband and wife existed between the driver of the vehicle and the other occupant will not render the negligence of the husband imputable to the wife. *Indianapolis St. R. Co.* v. *Johnson,* 163 Ind. 518, 72 N. E. 571. When, however, the parties are engaged in a joint enterprise, the contributory negligence of one party is imputed to the other if within the scope of the enterprise. *Beaucage* v. *Mercer* (1910), — Mass. —, 92 N. E. 774.

DAMAGES—PERSONAL INJURIES—PREDISPOSITION TO DISEASE.—Plaintiff was employed in defendant's mill, and was injured by a defective machine, the injury resulting in appendicitis. The defendant claimed that the appendicitis existed before the injury, and that the injury merely brought about an aggravation of the disease already existing, for which defendant should not be held liable. *Held,* one suffering from a disease, or predisposition to disease, may recover for the aggravation of such condition, caused by another's negligence. *Bloomquist* v. *Minneapolis Furniture Co.* (1910), — Minn. —, 127 N. W. 481.

Where one already diseased has suffered from a personal injury, the mere fact of personal condition will not deny him all the damages suffered from the accident. *Montgomery etc. R. Co.* v. *Mallette,* 92 Ala. 209, 9 South. 363; *Louisville & N. R. Co.* v. *Jones,* 83 Ala. 376, 3 South. 902. The rule remains the same whether the injury supervenes and proximately results from defendant's wrong, or whether the disease existed at the time of the injury and was aggravated by it. *Ohio etc. R. Co.* v. *Hecht,* 115 Ind. 443, 17 N. E. 297. Plaintiff's intestate died of pneumonia alleged to have been caused by injuries received in a railroad accident, and it was held that if deceased was injured through the negligence of defendant company, and such injury caused or aggravated the disease so that death resulted on that account, plaintiff is entitled to recover, unless she would have died from the disease as an independent cause. *Louisville & N. R. Co.* v. *Jones,* supra. In an action for personal injuries, it was shown that plaintiff's arm had been previously injured in a saw mill but it was held that plaintiff should have damages resulting from the aggravation which produced stiffness of his arm. *Montgomery & E. Ry. Co.* v. *Mallette,* supra. A tort to health already impaired cannot be redressed except by giving damages for any further impairment and for any obstruction occasioned by the tort to recovery from existing maladies. To cause sickness wrongfully, or to aggravate or protract it, is an injury to health for which damages are recoverable. *Bray* v. *Latham,* 81 Ga. 640, 8 S. E. 64. The fact that one was suffering from a disease when injured does not preclude recovery for the injuries, as, though they were aggravated thereby, the negligence causing the accident is the proximate cause of the injury. *Louisville, N. A. & C. Ry. Co.* v. *Snyder,* 117 Ind. 435, 20 N. E. 284, 10 Am. St. Rep. 60, 3 L. R. A. 434. It is a proper charge to a jury that if plaintiff had a constitutional tendency to disease, and the injury was the proximate cause of aggravating that tendency, recovery might be had. *Smalley* v. *City of Appleton,* 75 Wis. 18, 43 N. W. 826. But it has been held that if defendant had a right to enter upon the premises, and did not know of the nervous temperament of plaintiff, and used loud